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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NORMAN KELLY MILES,

Defendant and Appellant.

G041833

(Super. Ct. No. 07NF1007)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Lisa Holder, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, James D. Dutton and Melissa Mandel, Deputy Attorney General, for Plaintiff and Respondent.

After the trial court denied Norman Kelly Miles's motions to suppress and traverse the search warrant for his residence, he pled guilty to three counts of possession of a firearm by a felon, possession of ammunition by a prohibited person, possession of body armor, negligent discharge of a firearm, possession of a deadly weapon, possession of an assault weapon, sale or transportation of a controlled substance, possession for sale of a controlled substance, and possession of marijuana for sale. The trial court sentenced him to 20 years and four months in prison. On appeal, he argues the court erroneously denied his motions to suppress and traverse the search warrant. Neither of his contentions has merit, and we affirm the judgment.

FACTS

One March morning, Norma Flanagan (Norma) called the police to report a family disturbance at her residence. She reported that her two sons, Albert Miles (Albert) and Norman Miles (Miles), locked themselves in her detached garage and were "acting crazy and throwing things around." Miles lived in the garage.¹

Two Anaheim police officers arrived at the residence at 9:49 a.m. While en route, the officers learned Miles, possibly armed with a gun, and Albert had exited the garage, and fled in a silver truck. The officers also learned that before the brothers drove away, gunshots were heard coming from the garage.

Upon arriving at the address, the officers exited their patrol car and approached the home. They noticed three holes in one side of the detached garage that appeared to have resulted from gunshots. The officers judged one of the holes to be fresh because of the debris on the driveway. They also noticed two security cameras and motion sensor lights pointed on the driveway.

¹ It is not clear from the record whether Albert lived in the garage with Miles, though it appears he did in fact reside at that address.

At this point, Bart Flanagan (Bart), Norma's husband and Albert and Miles's stepfather, met the officers on the driveway. He told the officers both stepsons had extensive drug and criminal histories, which included their possible involvement in a shooting incident with the police some years earlier.

Bart told the officers what had occurred that morning. After retrieving the mail, he approached the garage. Finding the side door to the garage locked, Bart knocked and told his stepsons he had mail for them. They refused to unlock the door, and asked Bart to slide the mail underneath the door. He refused and headed back into the house. Bart heard yelling and what sounded like them throwing things inside the garage. Seconds later, he heard two gunshots. Looking out the window from inside the house, he saw Miles and Albert leaving the side door of the garage, with Miles carrying what Bart believed to be the pieces of a .22-caliber rifle. Before departing in a silver truck, they yelled back at the house, "God is on our side" and "God will be the judge."

Officers asked Bart for permission to force entry into the locked garage and he consented. After kicking in the door, the officers saw spent shotgun shell casings on the floor, multiple gunshot holes in the side of the garage, a workbench with a vise containing a sawed-off shotgun barrel, and a television that displayed the feeds from both outside cameras. A car was also in the garage. The officers observed a gun case resting atop an AR-15 assault rifle on the car's passenger seat. Underneath the rifle was a bag containing a bulletproof vest.

An inquiry into the brothers' criminal history revealed Albert was on parole for murder, and Miles had been discharged from parole. Their prior convictions stemmed from a shooting incident with California Highway Patrol (CHP) officers.

After entering the garage and speaking with Bart and Norma, officers sought a search warrant for the premises and the silver truck. The affidavit presented to the magistrate in support of the warrant contained the following material facts: Patrol officers en route to a domestic disturbance "received updated information that the

reporting party heard [two] gunshots come from the garage where the suspects had barricaded themselves. Then the reporting party advised that the suspects left the scene.” At the scene, Bart informed officers that shortly after the dispute over the mail, he heard noise coming from the garage along with two gunshots. The brothers left the garage and yelled, ““God is on our side”” or ““God will be the judge,”” before driving away in a silver truck. Bart observed Miles carrying “the wood stock of a possible rifle in one hand and the black barrel of a possible rifle in the other.”

The affiant then listed the items seen during the warrantless entry: “[Officers] forced entry into the locked garage after obtaining consent from [Bart]. They found a vise on the workbench. In the vise was the sawed-off barrel of a shotgun, with filings on the end. There was a hacksaw next to the vise. There was [a car] parked in the garage. The officers noticed a gun case on the seat. Under the gun case was an AR-15 automatic rifle. Under the AR-15 was another bag, this one containing a bullet proof vest. [An officer] told me that he noticed a shotgun blast in the sill plate over the garage and more possible bullet holes in the garage walls. [He] also saw a spent round by the garage’s man-door and two empty shotgun shells on the garage floor.”

The affidavit included Miles’s and Albert’s respective parole status. The affiant also relayed information gathered from Norma at the scene regarding the brothers’ criminal histories. She informed officers that 10 to 15 years before, Miles and Albert were involved in a gun battle with CHP officers, which resulted in their incarceration and the death of a third brother.

The affiant stated further, “[b]oth Norman and Albert Miles are felons. I believe they are armed with a sawed-off shotgun. Their prior history indicates that they are not afraid to confront law enforcement and use force and gunfire on law enforcement. They are a danger to society.”

The affiant “expect[ed] to find, and request[ed] permission to search for, any handguns, ammunition, any miscellaneous gun pieces . . . packaging for a handgun, holsters, gun cases, gun cleaning equipment, targets, and spent casings.” He added, “It is my experience that these items are commonly possessed by people who possess firearms. It has been my experience that whether or not the firearm sought is recovered, the above items would tend to show that a firearm existed and may have once been located in a place to which the suspect had access, and that these items would tend to connect the suspect with the weapon sought.” The affiant additionally requested permission to search for a ballistics vest. The magistrate issued the search warrant.

Around 6:00 p.m. that night, Miles and Albert returned to the garage in their silver truck and officers took them into custody. In the truck, officers found a loaded .38-caliber revolver on the passenger’s side floorboard. In the backseat, they found a loaded sawed-off shotgun and a bulletproof vest. Located in the truck’s center console was a cell phone holder containing five small plastic bags, each filled with varying amounts totaling 8.34 grams of “an off-white crystalline substance” recognized by an officer as methamphetamine.

Pursuant to the search warrant, officers seized, along with items they observed during their initial warrantless entry into the garage, a small plastic bag containing 2.37 grams of methamphetamine; three small plastic bags containing varying amounts of marijuana, all totaling 6.46 grams; several clear plastic bags; and two digital scales.

The police interviewed Miles at the station that night after arresting him. During the interview, Miles stated, “he heard some noises and thought there were people outside” the garage that morning. He claimed he “fired the gun to scare them away.” In response to further questioning, Miles identified the drugs as methamphetamine, and explained he sawed off the barrel of the shotgun because “it made it easier to carry . . . around.”

An information charged Miles with the following: three counts of possession of a firearm by a felon pursuant to Penal Code section 12021, subdivision (a)(1)²; possession of ammunition by a prohibited person pursuant to section 12316, subdivision (b)(1); possession of body armor pursuant to section 12370, subdivision (a); negligent discharge of a firearm pursuant to section 246.3, subdivision (a); possession of a deadly weapon pursuant to section 12020, subdivision (a)(1); possession of an assault weapon pursuant to section 12280, subdivision (b); sale or transportation of a controlled substance pursuant to Health and Safety Code section 11379, subdivision (a); possession for sale of a controlled substance pursuant to Health and Safety Code section 11378; and possession of marijuana for sale pursuant to Health and Safety code section 11359. Additionally, the information alleged Miles was personally armed with a firearm while violating Health and Safety Code sections 11378 and 11379, subdivision (a), pursuant to section 12022, subdivision (c), as to the controlled substance counts. The information also alleged he suffered five prior strike convictions pursuant to sections 667, subdivisions (d), and (e)(2)(A), and 1170.12(b) and (c)(2)(A).

Pursuant to section 1538.5,³ Miles filed motions to traverse the search warrant and to suppress evidence. The prosecutor opposed the motions.⁴

² All further statutory references are to the Penal Code, unless otherwise indicated.

³ Miles additionally filed a motion to quash the search warrant based on the grounds items were seized during the search not listed in the affidavit. This motion is not at issue on appeal.

⁴ The prosecutor's opposition was not included in the clerk's transcript. The Attorney General moved to augment the record with the opposition in the form of the file stamped face page and court minutes. We granted the motion to augment, but unfortunately do not have the substance of the opposition before us.

At the hearing on the motions, as to the suppression motion, Miles argued the initial warrantless entry into the garage was a “liberty intrusion.” He asserted the prosecutor had the burden of pleading sufficient justification for such an entry. He also claimed Bart was incapable of giving officers consent to enter because he was not the homeowner.

In response, the prosecutor argued the initial entry was justified because of “exigent circumstances and/or consent,” based on “apparent authority from Bart.” Moreover, the prosecutor claimed that, “even if we were to take [the] evidence [observed in the initial search] out of the warrant, the warrant still has probable cause.”

With respect to the motion to traverse, Miles argued the search warrant was defective because the supporting affidavit contained erroneous information and material omissions.⁵ The prosecutor argued Miles failed to show any “intentional misstatement [or] recklessness by the affiant,” and those inconsistencies that did exist related only to “petty little things.” The prosecutor again contended that even if the contested points of the affidavit were removed, probable cause existed.

The trial court denied both motions. The court stated: “Okay. Well, it’s a strange set of facts to say the least, and I think that, you know, counsel for the People acknowledge that those were inaccuracies in the court, some strange facts occurred and there are some inaccuracies in the report. [¶] However, the analysis is twofold: one, whether those inaccuracies amount to material misstatements that are intentional or

⁵ Miles specifically contended: (1) the affiant wrongly alleged firearms were discharged at Bart; (2) the affiant wrongly claimed “both subjects were on parole” because only Albert was on parole; (3) the affiant inaccurately claimed Norma stated the brothers barricaded themselves in the garage; (4) the rifle and vest referred to in the affidavit could only be seen if other items were removed from on top of them; and (5) the affiant mischaracterized the conversation officers had with Norma regarding a past shootout with CHP by asserting that a third brother was killed in the incident, and that Albert and Miles were charged with murder as a result, when actually, nobody was killed and the brothers were charged with attempted murder.

constitute reckless disregard for the truth, and if so even if that is true, if you meet that burden, does that knock out probable cause in the issuance of a warrant. And I do not think it does . . . on either case. I don't see the - - I don't see the state of the evidence even though as I indicated some strange set of facts, I don't see it arising to the level of deliberate or recklessly false statements. [¶] If I am wrong on that, even with respect to that if there were, the court still feels that there is sufficient probable cause in the state of the case to support the issuance of a warrant. So on both grounds I don't feel that they are grounds to suppress and traverse this warrant. So accordingly all motions are going to be denied.”

Following the trial court's denial of the motions, Miles pled guilty to all eleven counts and admitted all allegations. The trial court sentenced him to a total state prison term of 20 years and four months.

DISCUSSION

Miles contends the trial court erroneously denied his motions to suppress evidence and traverse the search warrant. He claims Bart did not have authority to consent to entry of the locked garage and there were no exigent circumstances justifying a warrantless entry into the garage. Additionally, he asserts the affidavit does not include sufficient probable cause supporting issuance of the search warrant.

As we explain below, the parties did not litigate and the trial court did not make any findings on the issues of consent or exigent circumstances, a point the Attorney General concedes.⁶ Accordingly, we have no evidence from which to find consent or exigent circumstances justifying the initial search. Relying only on the affidavit excised of information acquired by officers during the warrantless entry into the locked garage,

⁶ Because there was no evidentiary hearing on these exceptions to the warrant requirement, we need not address Miles's claim concerning the proper burden of proof.

we nevertheless find sufficient probable cause to justify the search of the garage, the truck, and Miles.

Preliminary Matters

The prosecutor offered no evidence on the issues of consent or exigent circumstances. The trial court denied the motion to suppress because it determined that even without the inclusion of items observed during the warrantless entry, the affidavit included sufficient probable cause. Because of this determination, we have no “findings of historical fact” on which we can “determine as a matter of law” whether the initial entry constituted “an unreasonable search and/or seizure.” (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922 (*Miranda*)).) Thus, we must assume the initial entry was unlawful, and review the trial court’s finding based solely on the affidavit excised of evidence observed during the warrantless entry.

Our Supreme Court in *People v. Weiss* (1999) 20 Cal.4th 1073, 1079-1080 (*Weiss*), interpreting the United States Supreme Court’s decision in *Murray v. United States* (1988) 487 U.S. 533 (*Murray*), clarified the circumstances under which a trial court should consider evidence acquired pursuant to a warrant issued based on both lawfully and unlawfully obtained information. (*Weiss, supra*, 20 Cal.4th at p. 1077.) The court explained two findings are required to avoid the suppression of such evidence: (1) that after the unlawfully obtained information is excised from the affidavit, “probable cause remains to support the warrant; and [(2)] the officers would have sought the warrant without the illegally obtained information.” (*Ibid.*) Therefore, we must proceed with our analysis assuming “the affidavit supporting the search warrant did contain information derived from unlawful conduct as well as other, untainted, information.” (*Weiss, supra*, 20 Cal.4th at p. 1078.) We conclude the *Weiss* elements are satisfied.

Probable Cause

“In reviewing the denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court’s ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence. We then decide for ourselves what legal principles are relevant, independently apply them to the historical facts, and determine as a matter of law whether there has been an unreasonable search and/or seizure.” (*Miranda, supra*, 17 Cal.App.4th at p. 922.) “Our review is confined to the correctness or incorrectness of the trial court’s ruling, not the reasons for its ruling. [Citations.]” (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 27.)

“Probable cause to search exists when, based upon the totality of the circumstances described in the affidavit, ‘there is a fair probability that contraband or evidence of a crime will be found in a particular place.’ [Citations.]” (*People v. Farley* (2009) 46 Cal.4th 1053, 1098 (*Farley*).) Put another way, “[p]robable cause exists when the information on which the warrant is based is such that a reasonable person would believe that what is being sought will be found in the location to be searched.” [Citation.] ‘Probable cause must attach to each place to be searched. [Citations.] Thus, an affidavit for a search warrant must contain facts demonstrating a substantial probability that [contraband or] evidence of a crime will be located in a particular place. [Citations.]’ (*People v. Garcia* (2003) 111 Cal.App.4th 715, 721 (*Garcia*).)

Further, “[a] search warrant must ‘particularly describ[e] the place to be searched.’ [Citations.] “. . . By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.” [Citations.]’ ‘Whether the description in a warrant of property to be seized is sufficiently definite is a question of law subject to independent review by the appellate court.’ [Citations.]’ (*Farley, supra*, 46 Cal.4th at p. 1099.)

Analysis

Here, after excising observations made during the initial warrantless search, the affidavit sets forth the following facts: (1) officers were called out to a residence in response to a domestic dispute between Miles and Albert, and their stepfather, Bart; (2) both brothers were felons with a history of gun violence against law enforcement—Albert was on parole for attempted murder of a police officer and Miles had been recently discharged from parole; (3) Bart heard gunshots coming from inside the locked garage; (4) Bart saw Miles leave the scene carrying what appeared to be the “wood stock of a possible rifle in one hand and the barrel of a possible rifle in the other hand;” and (5) Bart heard the brothers shout, ““God is on our side”” or ““God will be the judge.””

The Attorney General contends these facts alone are sufficient to support the finding there was probable cause to believe contraband or evidence of a crime would be found inside the garage. Specifically, the Attorney General claims “the facts support a finding of probable cause that [Miles] and his brother were felons in possession of a firearm, that they had negligently discharged a weapon, and that evidence of those crimes was likely to be found inside the garage.” We agree.

The warrant sought to recover any firearm, ammunition, any container used for storing a firearm or ammunition, or “any spent projectiles or casings.” Bart reported hearing gunshots and seeing Miles leave the garage carrying what appeared to be gun components. Officers could reasonably expect to find spent projectiles or casings inside the garage. Thus, there was a “substantial probability that [contraband or] evidence of a crime [would] be located in” the garage. (*Garcia, supra*, 111 Cal.App.4th at p. 721.)

With respect to the requirement the evidence demonstrate the officers would have sought the warrant without the illegally obtained information, this may reasonably be inferred from the trial court’s ruling. As we explain above, all reasonable legitimate inferences are to be indulged to uphold the trial court’s findings, and we will

uphold the court's express or implied finding if it is supported by substantial evidence. (*Miranda, supra*, 17 Cal.App.4th at p. 922.)

Here, officers received a report of a domestic dispute and when they arrived at the house, learned someone had fired gun shots. Officers ran a criminal background check on the Miles brothers and learned they were involved in an officer-related shooting that resulted in convictions. Based on this information, we conclude the officers would have certainly sought a search warrant even without the illegally obtained information.

To the extent Miles contests the trial court's refusal to suppress those items found in the truck, we find the redacted affidavit contains a sufficient showing of probable cause to justify the issuance of the search warrant as to the truck. Unlike the garage, there was a substantial probability evidence a crime would be found in the truck. Bart heard gunshots, he saw what could have been a gun in Miles's possession, he saw the brothers leave the scene in the truck, and officers learned he was a felon. Therefore, it was reasonable to conclude evidence of the illegal possession of a firearm would be found in the truck.

Finally, as to Miles's motion to traverse the search warrant, even when we excise the alleged material omissions and false statements, the affidavit's remaining contents are sufficient to justify a finding of probable cause, as we explain more fully above. (*People v. Panah* (2005) 35 Cal.4th 395, 456; *Franks v. Delaware* (1978) 438 U.S. 154.) Miles contends the affidavit incorrectly stated he fired a gun at Bart, he barricaded himself in the garage, he was on parole for murdering a police officer, and officers found a gun and bullet proof vest in the garage. None of these alleged material false statements alter our conclusion. There was evidence one or both Miles brothers fired a weapon, they locked themselves in the garage, and Miles was recently discharged from parole for the attempted murder of a police officer. Therefore, we conclude Miles did not sufficiently show the affidavit omitted material facts that would have changed the probable cause determination.

DISPOSITION

The judgment is affirmed.

O'LEARY, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.